

GOVERNMENT OF MALAYSIA

v.

ROHAYA MOHD. MAJZUB & ORS.

SUPREME COURT, KUALA LUMPUR
HASHIM YEOP SANI ACTING CJ (MALAYA)
MOHD. YUSOF MOHAMED SCJ

AJAIB SINGH J

[SUPREME COURT CIVIL APPEAL NO. 546 OF 1987]
29 NOVEMBER 1988

ADMINISTRATIVE LAW: *Public Tribunal Services Act - Section 15(5) - Declaratory judgment for application of award of Tribunal - Conditions of services and salary allowance of Government employees.*

The respondents were appointed as Broadcasting Assistants by the appellant after 1 January 1978 via certain letters of appointment. Some Broadcasting Assistants appointed prior to 1 January 1976 had made a complaint to the Public Services Tribunal ("the Complainants") and pursuant to the recommendation of the Tribunal the appellant implemented the award of the Tribunal to the Complainants but not to the respondents.

The respondents applied for a declaration that they be entitled to the relief in the said award. At the High Court, the Judge held that by virtue of s. 15(1) of the Public Services Tribunal Act the appellant was bound to implement the Tribunal's recommendation on the appellants.

Held:

[1] the learned Judge was wrong in his interpretation of s. 15(1) of the Public Services Tribunal Act as this section only requires the application of the award to other public officers similarly situated as the Complainants which resulted in the award;

[2] the respondents are bound by their acceptance of the offers of appointment and any change in their conditions of service or scheme of salary should be negotiated with the Government;

[3] the issue of a declaration is discretionary and in a case like this where the claims concerned conditions of service and salary scales in the Government service, the Court should not rush into making a declaration; and

[4] the Court should not usurp the functions of the Tribunal or the Government in matters of salary scales and conditions of service.

[Appeal allowed.]

Legislation referred to:

Public Service Tribunal Act 1977, s. 15(1), (5)

For the appellant - K.N. Segara, SFC

For the respondents - K.P. Gengadharan (N. Mahalingam with him); M/s. Genga, Maha, Wong & Co.

JUDGMENT

Hashim Yeop Sani Acting CJ (Malaya):

The respondents were appointed on various dates between 1980 and 1981 as Broadcasting Assistants. They became so employed by the government by virtue of letters of offer issued by the government to them and accepted by them.

a The Public Services Tribunal handed down an award on 12 August 1981 following a complaint of anomaly by one G. Sundaraju and 29 others. The respondents were not among them.

After the award the government implemented the recommendation of the Tribunal in the first part of the award to Sundaraju and his 29 colleagues who were appointed before 1 January 1976 but did not implement the second part of the award to the respondents who were appointed after 1 January 1978.

b The learned Judge relied on s. 15(1) of the Public Services Tribunal Act and said that the government was bound to implement the Tribunal's recommendation on the respondents. We are unable to agree with the learned Judge on his interpretation of s. 15(1) of the Act. Apart from the fact that the second part of the Tribunal's award should be regarded, in so far as concerned the respondents, only as an observation of the Tribunal, the respondents

c are in our opinion bound by their acceptance of the offers of appointment and any change in their conditions of service or scheme of salary should be negotiated with the government. We do not think it is proper for the Court to interfere with the contractual right between the respondents and the government.

d We also do not agree that s. 15(5) of the Public Services Tribunal Act should be applied in this case because s. 15(5) of the Act only requires the application of the award to other public offices similarly situated as the complainant which resulted in the award.

Finally the respondents came to the Court asking for declarations that they be given B3 salary scale of the Cabinet Committee Report with effect from the date of employment and that they are entitled to the relief in the Public Services Tribunal award. Issuing of the declaration is discretionary and in a case like this where the claims concerned conditions of service and salary scales in the government service, the Court should not rush into making

e declaration. The Court should not usurp the functions of the Tribunal or the government in matters of salary scales and conditions of service.

The appeal is accordingly allowed with costs.

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Also found at [1989] 1 CLJ 147

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